



[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE-2014-BT-STD-0026]

RIN: 1904-AD32

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Residential Furnaces; Energy Conservation Standards for Residential Direct Heating Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; technical amendment.

SUMMARY: The U.S. Department of Energy (DOE) is issuing a final rule technical amendment to implement two orders issued by the U.S. Court of Appeals for the District of Columbia Circuit in separate litigation. Specifically, DOE is amending the relevant portions of its regulations to reflect the Court's order vacating the amended energy conservation standards for non-weatherized gas furnaces (including mobile home furnaces), which were adopted in the June 27, 2011 direct final rule for residential furnaces and residential central air conditioners and heat pumps. Similarly, DOE is also amending the relevant portions of its regulation to reflect the Court's decision to vacate the regulatory definition of "vented hearth heater" (and by

implication, the associated energy conservation standards), which were developed in the April 27, 2010 and November 18, 2011 final rules for residential direct heating equipment.

DATES: Effective Date: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

A. Residential Furnaces

On November 19, 2007, DOE published a final rule in the Federal Register (hereinafter the “November 2007 final rule”) that amended the energy conservation standards for residential furnaces and boilers. 72 FR 65136. The compliance date for the standards was set at November 19, 2015. However, following DOE’s adoption of the November 2007 final rule, several parties jointly sued DOE in the United States Court of Appeals for the Second Circuit (Second Circuit)

to invalidate the rule.¹ The petitioners asserted that the standards for residential furnaces promulgated in the November 2007 final rule did not reflect the “maximum improvement in energy efficiency” that “is technologically feasible and economically justified,” as required under 42 U.S.C. 6295(o)(2)(A). On April 16, 2009, DOE filed with the Court a motion for voluntary remand that the petitioners did not oppose. The motion did not state that the November 2007 final rule would be vacated, but indicated that DOE would revisit its initial conclusions outlined in the November 2007 final rule in a subsequent rulemaking action. DOE also agreed that the final rule resulting from the subsequent rulemaking action would address both regional standards for furnaces, as well as the effects of alternate standards on natural gas prices. On April 21, 2009, the U.S. Court of Appeals for the Second Circuit granted DOE’s motion, thereby remanding the rule to DOE for further proceedings without vacating the November 2007 final rule.

On June 27, 2011 DOE published a final rule in the Federal Register (hereinafter the “June 2011 direct final rule”) that amended the energy conservation standards for residential furnaces pursuant to the voluntary remand in State of New York, et al. v. Department of Energy, et al. On October 31, 2011, DOE published a notice of effective date and compliance dates to confirm these amended energy conservation standards and compliance dates contained in the June 2011 direct final rule. 76 FR 67037. After the publication of the October 2011 notice, the American Public Gas Association (APGA) sued DOE in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to invalidate the rule as it pertained to non-

¹ Petition for Review, State of New York, et al. v. Department of Energy, et al., Nos. 08– 0311–ag(L); 08–0312–ag(con) (2d Cir. filed Jan. 17, 2008).

weatherized gas furnaces.² On March 11, 2014, DOE and APGA, as well as the various intervenors in the case, filed a joint motion for approval of a settlement in which DOE agreed to seek a remand of the non-weatherized gas furnaces portion of the June 27, 2011 direct final rule. On April 24, 2014, the D.C. Circuit approved the settlement agreement and issued an order that the standards established for non-weatherized gas furnaces and mobile home gas furnaces be vacated and remanded to DOE for further rulemaking.³ As a result, the standards established by the June 2011 direct final rule for the non-weatherized gas furnaces and mobile home gas furnaces will not go into effect, and instead, the standards established for these product classes of furnaces in the November 19, 2007 final rule will come into effect, with compliance required beginning on November 19, 2015. Thus, DOE is amending the Code of Federal Regulations (CFR) to reflect the Court's order impacting the standards for non-weatherized gas furnaces and mobile home gas furnaces.

B. Residential Hearth Products

In a final rule published in the Federal Register on April 16, 2010 (hereinafter the "April 2010 final rule"), DOE promulgated a definition for "vented hearth heater," established product classes for vented gas hearth direct heating equipment, and set minimum energy conservation standards for vented gas hearth direct heating equipment. 75 FR 20112. Compliance with the standard would have been required by April 16, 2013. Following DOE's adoption of the April

² Petition for Review, American Public Gas Association v. U.S. Department of Energy, et al., No. 11-1485 (DC Cir. filed Dec. 23, 2011).

³ Consistent with the settlement agreement, the direct final rule's amended standards for weatherized gas furnaces, non-weatherized oil-fired furnaces, and central air conditioners and heat pumps were allowed to be implemented on schedule.

2010 final rule, the Hearth, Patio & Barbecue Association (HPBA) sued DOE in the D.C. Circuit to invalidate the rule as it pertained to vented gas hearth products.⁴

On November 18, 2011, DOE published a final rule in the Federal Register that amended the definition of “vented hearth heater” to clarify the scope of the exclusion from coverage under energy conservation standards for those vented hearth heaters that are primarily decorative hearth products. 76 FR 71836. On February 8, 2013, the Court issued a decision in which it ordered that the definition of “vented hearth heater” be vacated and remanded the matter to DOE to interpret the challenged provisions in accordance with the opinion of the Court.⁵ Consequently, the standards established by the April 2010 final rule for vented gas hearth direct heating equipment will not go into effect, with the result being that there are no standards for these products at this time. Thus, DOE is amending the CFR to reflect the Court’s order to vacate the definition for “vented hearth heater.” In addition, DOE is removing the standards set for vented gas hearth direct heating equipment in the April 2010 final rule, as there is no longer a definition that covers this type of equipment.

II. Summary of the Need for Correction

By this action, DOE is updating the CFR to implement changes to DOE’s regulations for residential furnaces and residential direct heating equipment required by two Court orders, as described in section I. This is a purely technical amendment, and at this time, DOE is not exercising any of the authority that Congress has provided in the Energy Policy and Conservation Act of 1975 (EPCA; 42 U.S.C. 6291 *et seq.*), as amended, for the Secretary of Energy to revise definitions and energy conservation standards.

⁴ Petition for Review, Hearth, Patio, & Barbecue Association v. Department of Energy, *et al.*, No 10- 1113 (DC Cir. filed May 27, 2010).

⁵ Hearth, Patio & Barbecue Association v. Department of Energy, *et al.*, 706 F.3d 499 (D.C. Cir. 2013).

III. Final Action

DOE has determined, pursuant to 5 U.S.C. 553(b)(B), that prior notice and an opportunity for public comment on this final rule are unnecessary. DOE is merely implementing changes to the CFR text prescribed by two Court orders and making other limited revisions to its regulations as necessitated by those orders. DOE is not exercising any of the discretionary authority that the Congress has provided to the Secretary of Energy in EPCA. DOE, therefore, finds that good cause exists to waive prior notice and an opportunity to comment for this rulemaking. For the same reasons, DOE, pursuant to 5 U.S.C. 553(d)(3), finds that good cause exists for making this final rule effective upon publication in the Federal Register.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

This final rule is not a “significant regulatory action” under section 3(f)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563. Accordingly, this action was not subject to review by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential

impacts of its rules on small entities are properly considered during the rulemaking process. 68
FR 7990. DOE has made its procedures and policies available on the Office of the General
Counsel's website (<http://energy.gov/gc/office-general-counsel>). Because this is a technical
amendment for which a general notice of proposed rulemaking is not required, the analytical
requirements of the Regulatory Flexibility Act do not apply to this rulemaking.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Issued in Washington, DC on July 21, 2014.

Kathleen B. Hogan,
Deputy Assistant Secretary for Energy Efficiency,
Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE amends part 430 of Chapter II, subchapter D of title 10, Code of Federal Regulations as set forth below:

PART 430 – ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291-6309; 28 U.S.C. 2461 note.

§430.2 [Amended]

2. Section 430.2 is amended by removing the definition of “vented hearth heater.”
3. Section 430.32 is amended by:
 - a. Revising paragraph (e)(1); and
 - b. Revising paragraph (i)(2).

The revisions read as follows:

§430.32 Energy and water conservation standards and their compliance dates.

(e) *Furnaces and boilers.* (1) *Furnaces.* (i) The Annual Fuel Utilization Efficiency (AFUE) of residential furnaces shall not be less than the following for non-weatherized gas furnaces manufactured before November 19, 2015, non-weatherized oil furnaces manufactured before May 1, 2013, and weatherized furnaces manufactured before January 1, 2015:

Product class	AFUE (Percent)¹
(A) Furnaces (excluding classes noted below)	78

(B) Mobile Home furnaces	75
(C) Small furnaces (other than those designed solely for installation in mobile homes) having an input rate of less than 45,000 Btu/hr	
(1) Weatherized (outdoor)	78
(2) Non-weatherized (indoor)	78

¹ Annual Fuel Utilization Efficiency, as determined in §430.23(n)(2) of this part.

(ii) The AFUE of residential furnaces shall not be less than the following starting on the compliance date indicated in the table below:

Product class	AFUE (Percent)¹	Compliance Date
(A) Non-weatherized gas furnaces (not including mobile home furnaces)	80	November 19, 2015
(B) Mobile Home gas furnaces	80	November 19, 2015
(C) Non-weatherized oil-fired furnaces (not including mobile home furnaces)	83	May 1, 2013
(D) Mobile Home oil-fired furnaces	75	September 1, 1990
(E) Weatherized gas furnaces	81	January 1, 2015
(F) Weatherized oil-fired furnaces	78	January 1, 1992
(G) Electric furnaces	78	January 1, 1992

¹ Annual Fuel Utilization Efficiency, as determined in §430.23(n)(2) of this part.

(iii) Furnaces manufactured on or after May 1, 2013, shall have an electrical standby mode power consumption ($P_{W,SB}$) and electrical off mode power consumption ($P_{W,OFF}$) not more than the following:

Product class	Maximum standby mode electrical power consumption, $P_{W,SB}$ (watts)	Maximum off mode electrical power consumption, $P_{W,OFF}$ (watts)
(A) Non-weatherized oil-fired furnaces (including mobile home furnaces)	11	11
(B) Electric furnaces	10	10

* * * * *

(i) * * *

(2) Vented home heating equipment manufactured on or after April 16, 2013, shall have an annual fuel utilization efficiency no less than:

Product class	Annual fuel utilization efficiency, April 16, 2013 (percent)
Gas wall fan type up to 42,000 Btu/h	75
Gas wall fan type over 42,000 Btu/h	76
Gas wall gravity type up to 27,000 Btu/h	65
Gas wall gravity type over 27,000 Btu/h up to 46,000 Btu/h	66
Gas wall gravity type over 46,000 Btu/h	67

Gas floor up to 37,000 Btu/h	57
Gas floor over 37,000 Btu/h	58
Gas room up to 20,000 Btu/h	61
Gas room over 20,000 Btu/h up to 27,000 Btu/h	66
Gas room over 27,000 Btu/h up to 46,000 Btu/h	67
Gas room over 46,000 Btu/h	68

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